



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1031]

RIN 1625-AA00

Safety Zone, Great Egg Harbor Bay; Somers Point, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is extending the dates for a temporary safety zone on the waters of Great Egg Harbor Bay in the vicinity of the Garden State Parkway Bridge in Somers Point, NJ. Due to the severe weather felt in the Mid-Atlantic region in the past month the project has been delayed by a number of weeks and more time is needed to complete the critical repairs for the Garden State Parkway Bridge. The safety zone will continue to restrict vessel traffic on a portion of the Great Egg Harbor Bay while critical girder erection work is being conducted as part of the rehabilitation project of the main navigational channel section of the bridge. This extension of the temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the bridge construction operations.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through December 31, 2015. For purposes of enforcement, actual notice will be used from October 5, 2015 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-1031 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Brennan Dougherty, U.S. Coast Guard, Sector Delaware Bay, Chief Waterways Management Division, Coast Guard; telephone (215)271-4851, e-mail [Brennan.P.Dougherty@uscg.mil](mailto:Brennan.P.Dougherty@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because this critical phase of the rehabilitation work to the Garden State Parkway Bridge, main channel section, poses a safety threat to maritime traffic and a safety zone is needed. Furthermore, the request for work to continue until December 31, 2015

was not received until November 12, 2015. Due to the need for an immediate response and the late notification of the work, providing a notice and comment period would be impractical.

We are issuing this rule, and, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the Federal Register because allowing this construction to go forward without a safety zone in place would expose mariners and the public to unnecessary dangers associated with bridge construction operations and navigation channel closure.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231; 33 CFR 1.05-1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. The Captain of the Port, Delaware Bay, has determined that potential hazards associated with bridge construction operations starting October 5, 2015, will be a safety concern for anyone within a 200-yard radius of bridge work, vessels, and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge work is being conducted.

### **IV. Discussion of the Rule**

This rule establishes the continuation of a safety zone from October 5, 2015, through December 31, 2015, and the zone will be enforced from 7 a.m. to 6 p.m. daily, excluding Sundays. The safety zone will cover all navigable waters within 200 yards of vessels and machinery, at approximate position, 39°17'32"N, 074°37'32"W, being used by personnel for construction and repair of the Garden State Parkway Bridge over the Great Egg Harbor Bay in Somers Point, NJ. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while bridge construction operations are being

conducted. Entry into, transiting, or anchoring within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port (COTP) or make satisfactory passing arrangements with the construction vessel per this rule and the Rules of the Road (33 C.F.R. Subchapter E). During portions of this project the main navigation channel will be closed each day for vessel traffic from 7 a.m. to 6 p.m., excluding Sundays. These closures are necessary for safety due to hazards associated with bridge maintenance. Bridge work will stop and the channel will be clear for vessels to pass under the bridge between 6 p.m. to 7 a.m. Monday through Saturday; during these hours when bridge work is stopped, mariners may transit the main channel without restrictions. In addition, the channel will be fully available on Sundays and vessels may transit freely. At all times, secondary bridge spans will be clear to pass; vessels able to pass under secondary channel spans may do so at any time. There will be number of working days that the navigation channel will not be obstructed; however, mariners wishing to transit Monday through Saturday between 7 a.m. and 6 p.m. must make passing arrangements with the on scene construction vessel or obtain permission from the COTP or his representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not

been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit from the hours of 6 p.m. to 7 a.m., daily, excluding Sundays. At other times, vessel master may request permission to transit the safety zone. There will be number of working days that the navigation channel will not be obstructed. At all times, secondary bridge spans will be clear to pass; vessels able to pass under secondary channel spans may do so at any time without requesting permission. This safety zone will impact a small designated area of the Great Egg Harbor Bay, in Somers Point, NJ for no more than an 11 hour period each day.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would

affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and

Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone in force for no more than 11 hours each day, from October 1, 2015, to December 31, 2015, that prohibits entry within 200 yards of vessels and machinery being used by personnel conducting bridge work on the Garden State Parkway Bridge over the Great Egg Harbor Bay, in Somers Point, NJ. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

## G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-1031 to read as follows:

#### **§ 165.T05-1031 Safety Zone, Great Egg Harbor Bay; Somers Point, NJ**

(a) **Location.** The following area is a safety zone: all the waters of Great Egg Harbor Bay, 200 yards around the main channel portion of the bridge, in approximate position 39°17'32"N, 074°37'32"W. These coordinates are based upon North American Datum 83 (NAD 83).

***(b) Definitions.*** (1) **The Captain of the Port** means the Commander of Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) **Designated representative** means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist in enforcing



the safety zone described in paragraph (a) of this section.

(c) Regulations. The general safety zone regulations found in 33 CFR part 165 subpart C apply to the safety zone created by this section.

- (1) During periods of full channel closures, the main navigational channel will be obstructed and vessels will be unable to pass. Secondary bridge spans will be clear to pass; vessels able to pass under secondary channel spans may do so.
- (2) Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with the on-scene construction vessel in accordance with the Navigational Rules in 33 CFR Subchapter E. If vessels are unable to make satisfactory passing arrangements with the on-scene construction vessel, they may request permission from the COTP or his designated representative on VHF channel 16.
- (3) There will be number of working days that the navigation channel will not be obstructed; however, mariners wishing to transit during the enforcement period must still comply with the procedures in paragraph (c)(2) of this section.
- (4) The main channel will be clear from the hours of 6 p.m. to 7 a.m. daily, and every Sunday throughout the course of the project. Vessels may transit through the safety zone at these times without restriction.
- (5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations: enforcing laws; servicing aids to navigation, and emergency response vessels.

(d) Enforcement officials. The U.S. Coast Guard may be assisted by Federal, State, and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This rule will continue to be enforced from 7 a.m. to 6 p.m. each day except Sundays, from October 5, 2015, to December 31, 2015, unless cancelled earlier by the Captain of the Port.

Dated: December 9, 2015

Benjamin A. Cooper

Captain, U.S. Coast Guard,

Captain of the Port Delaware Bay

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